

Federal Communications Commission
Washington, D.C. 20554

Mr. Graham Milne
CEO
VIP Communications
41589 Research Place, Suite 100
Ashburn, VA 20147

Licensee/Applicant: **VIP Communications**
Waiver and Refund Request: Late Payment Penalty
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1),
1.1164)
Fee: Fiscal Year (FY) 2018 Regulatory Fee Penalty
Date Request Filed: October 12, 2018
Date Regulatory Fee Paid: October 11, 2018
Date Late Penalty Fee Paid: October 11, 2018
Fee Control No.: RROG-PGA3160267

Dear Mr. Milne:

This responds to the request of VIP Communications (VIP) for a waiver and refund of the penalty assessed against VIP for late payment of its Fiscal Year (FY) 2018 regulatory fees (Request)¹. For the reasons stated below, we deny the Request.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁴

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§

¹ Letter from Graham Milne, VIP Communications, 41589 Research Place, Suite #100, Ashburn, VA 20147 to Office of the Secretary (October 10, 2018, *rec'd* October 12, 2018) (*Request*).

² 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

³ 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1); 1.1164.

⁴ 47 C.F.R. § 1.1164.

1.1157(c)(1) and 1.1164. For FY 2018, the deadline for paying regulatory fees was September 25, 2018.⁵ Unfortunately, VIP did not pay its FY 2018 regulatory fees until October 9, 2018.⁶

VIP requests that we waive and refund the late payment penalty on the grounds that the Commission's Fee Filer system is so confusing and misleading that the VIP employees responsible for paying the company's FY 2018 regulatory fees were unable to determine the amount of fees owed and therefore, unable to timely pay VIP's FY 2018 regulatory fees. Among other things, VIP states that its employees logged on to the Fee Filer system several times before the September 25, 2018 deadline but were unable to find the correct page listing the amount VIP owed in FY 2018 regulatory fees.⁷

The Commission has repeatedly held repeatedly that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."⁸ Thus, when we evaluate waiver requests, we consider whether the request establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty payments. VIP's Request does not, for several reasons.

Each year the Commission publishes straightforward instructions for navigating Fee Filer to pay regulatory fees. This year, those instructions were published on August 30, 2018, nearly a month before the fees were due to be paid.⁹ Had VIP followed the instructions, it would have quickly found the information – the amount of the fee and payment instructions- it sought. We note also that the instructions and the process for determining regulatory fee amounts and for payment through the Fee Filer system have remained the same for a number of years,¹⁰ during which time VIP timely pay its regulatory fees.

In addition, we are troubled by VIP's assertion that its employees logged into the Fee Filer system several times before the September 25, 2018 deadline to determine the regulatory fee amount VIP owed. According to the Commission's log records, the first time VIP logged

⁵ See The Effective Date of FY 2018 Regulatory Fees and Multi-Year Wireless Fees, *Public Notice*, DA 18-952 (September 14, 2018). On September 21, 2018, the Commission extended the payment deadline to September 27, 2018 for regulatees affected by Hurricane Florence. The extended deadline did not apply to VIP as it is not located in any of the areas affected by the hurricane. See Regulatory Fee Filing Window for Those Regulatees Affected by Hurricane Florence Extended to Thursday, September 27, 2018, *Public Notice*, DA 18-975 (September 21, 2018).

⁶ VIP paid the late payment penalty on October 9, 2018 as well.

⁷ Request.

⁸ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

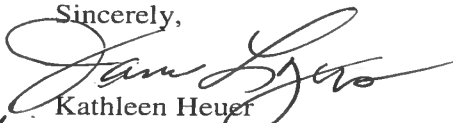
⁹ See Payment Methods and Procedures For Fiscal Year 2018 Regulatory Fees, *Public Notice* (August 30, 2018). On page 1 of the Public Notice, we noted "bills are available for viewing in the 'Regulatory Fee' link of Fee Filer". (emphasis added) The same information appears on page 3 of the Public Notice: "After logging in with an FRN and password, the 'Regulatory Fees' option should be selected to display billed and non-billed regulatory fees." (emphasis added)

¹⁰ See e.g., Payment Methods and Procedures For Fiscal Year 2015 Regulatory Fees, *Public Notice*, DA 15-1013 (September 11, 2015).

into the Fee Filer system during the FY 2018 regulatory fee filing season was on September 28, 2018, three days after the payment deadline.

Accordingly, VIP's request for waiver and refund of the late payment penalty it paid with its FY 2018 regulatory fee payment is denied.

If VIP has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

KOR: Kathleen Heuer
Chief Financial Officer